

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 5 Parole for Juvenile Offenders

SPONSOR(S): Weinstein and others

TIED BILLS: None **IDEN./SIM. BILLS:** SB 212

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee		Krol	Cunningham
2) Justice Appropriations Subcommittee			
3) Judiciary Committee			

SUMMARY ANALYSIS

Parole is a discretionary prison release mechanism administered by the Florida Parole Commission. An inmate who is granted parole is allowed to serve the remainder of his or her prison sentence outside of confinement according to terms and conditions established by the commission. Florida abolished parole in 1995.

In 2010, the United States Supreme Court held that the 8th Amendment of the U.S. Constitution prohibits the imposition of a life without parole sentence on a juvenile offender who did not commit homicide. The Court further held that states must give juvenile non-homicide offenders sentenced to life without parole a meaningful opportunity to obtain release.

The bill amends s. 947.16, F.S., to provide that a juvenile offender who is sentenced to life imprisonment for a nonhomicide offense may be eligible for parole.

The bill may have a positive but indeterminate fiscal impact. See "fiscal section."

The bill is effective upon becoming a law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Parole

Parole is a discretionary prison release mechanism administered by the Florida Parole Commission (commission) through chs. 947, 948, and 949, F.S. An inmate who is granted parole is allowed to serve the remainder of his or her prison sentence outside of confinement according to terms and conditions established by the commission. Parolees are supervised by Correctional Probation Officers of the Department of Corrections (department). Parole is not available for most crimes that were committed on or after October 1, 1983.¹ There is no parole eligibility for any crime committed on or after October 1, 1995. The commission reports that currently there are 5,360 Florida inmates still eligible for parole consideration and about 439 parolees under supervision in the community.²

Graham v. Florida

In 2010, the United States Supreme Court held that the 8th Amendment of the U.S. Constitution³ prohibits the imposition of a life without parole sentence on a juvenile offender who did not commit homicide.⁴ The case was *Graham v. Florida*, which originated from crimes committed in Jacksonville.⁵ The Court's opinion stated:

A State is not required to guarantee eventual freedom to a juvenile offender convicted of a nonhomicide crime. What the State must do, however, is give defendants like Graham some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation. It is for the State, in the first instance, to explore the means and mechanisms for compliance.⁶

Post-Graham Decision

Subsequent to the *Graham* decision, inmates who were convicted of nonhomicide offenses and sentenced to life imprisonment began petitioning for and receiving resentencing hearings. There appears to be no consolidated source for obtaining the results of these resentencing hearings. However, the results of some resentencing hearings are known from news reports. These include:

- An inmate sentenced to life for the 2005 rape of a young girl when he was seventeen years old was resentenced to a split sentence of 7 years in prison followed by 20 years of probation.⁷
- An inmate sentenced to four life sentences for armed robberies committed in 2004 and 2005 when he was 14 and 15 years old was resentenced to a term of 30 years.⁸
- An inmate sentenced to life for sexual battery with a weapon or force committed in 2008 when he was 14 was resentenced to a term of 65 years.⁹

In addition to resentencing hearings, juvenile offenders are appealing lengthy prison sentences as a violation of the *Graham* decision on the grounds that they effectively constitute a life sentence. Two

¹The exceptions are for capital felony murders committed prior to October 1, 1994, and capital felony sexual battery prior to October 1, 1995.

²Florida Parole Commission. 2012 Analysis of HB 5.

³The 8th Amendment of the U.S. Constitution forbids the government from imposing cruel and unusual punishment.

⁴*Graham v. Florida*, 130 S.Ct. 2011 (2010).

⁵*Id.*

⁶*Id.*

⁷"Rapist who was serving life sentence will get second chance," August 30, 2011, <http://www2.tbo.com/news/breaking-news/2011/aug/30/3/rapist-who-was-serving-life-resentenced-to-seven-y-ar-254096/> (last visited on January 24, 2012).

⁸"Man who served 11 years fails to persuade Hillsborough judge to set him free," October 6, 2011, <http://www.tampabay.com/news/courts/criminal/man-who-served-11-years-fails-to-persuade-hillsborough-judge-to-set-him/1195464> (last visited on January 24, 2012).

⁹"Teenage rapist Jose Walle resentenced to 65 years in prison," November 18, 2010, <http://www.tampabay.com/news/courts/criminal/teenage-rapist-jose-walle-re-sentenced-to-65-years-in-prison/1134862> (last visited on January 24, 2012).

recent Florida 1st District Court of Appeal cases have held that a 70-year and 50-year prison sentence were not the functional equivalent of a life sentence for the purposes of *Graham*.¹⁰

Effect of the Bill

The bill amends s. 947.16, F.S., to provide that a juvenile offender who is sentenced to life imprisonment for a nonhomicide offense may be eligible for parole.

The bill defines:

- “Juvenile offender” as an offender who was less than 18 years of age at the time the nonhomicide offense was committed.
- “Nonhomicide offense” as an offense that did not result in the death of a human being.

The bill requires the Parole Commission to conduct an initial eligibility interview with the juvenile offender to determine whether he or she has demonstrated maturity and reform while in the custody of the Department of Corrections to justify granting parole. The initial eligibility interview may only occur after the juvenile has served 25 years of incarceration for the offense for which parole is sought. The bill also provides that the initial eligibility interview and any subsequent eligibility interview may occur only if the juvenile offender has received no approved disciplinary reports for at least 3 years prior to the scheduled eligibility interview.

In determining whether the juvenile offender has demonstrated maturity and reform and whether he or she should be granted parole, the bill requires the commission to consider all of the following:

- The wishes of the victim or the opinions of the victim's next of kin.
- Whether the juvenile offender was a relatively minor participant in the criminal offense or acted under extreme duress or domination of another person.
- Whether the juvenile offender has shown sincere and sustained remorse for the criminal offense.
- Whether the juvenile offender's age, maturity, and psychological development at the time of the offense affected her or his behavior.
- Whether the juvenile offender, while in the custody of the department, has aided inmates suffering from catastrophic or terminal medical, mental, or physical conditions or has prevented risk or injury to staff, citizens, or other inmates.
- Whether the juvenile offender has successfully completed any General Educational Development or other educational, technical, work, vocational, or self-rehabilitation program.
- Whether the juvenile offender was a victim of sexual, physical, or emotional abuse before she or he committed the offense.
- The results of any mental health assessment or evaluation of the juvenile offender.

The bill provides that if the juvenile offender is not granted parole after the initial eligibility interview, he or she is eligible for a reinterview 7 years after the date of the denial of the grant of parole and every 7 years thereafter.

B. SECTION DIRECTORY:

Section 1. Cites the act as the “Graham Compliance Act.”

Section 2. Amends s. 947.16, F.S., relating to eligibility for parole; initial parole interviews; powers and duties of commission.

Section 3. Provides the act shall take effect upon becoming a law.

¹⁰ See *Gridine v. State*, 2011 WL 6849649 (Fla. App. 1st DCA 2011); *Thomas v. State*, 2011 WL 6847814 (Fla. App. 1st DCA 2011).

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state revenues.

2. Expenditures:

The Department of Corrections (DOC) reports that any fiscal impact would be positive but indeterminate because any releases resulting from this bill will be at the discretion of the Parole Commission.¹¹ In addition, the pool of inmates that might be impacted by the bill indicates that the effect on DOC will be negligible.¹² DOC states that there are currently 219 inmates in custody who meet the age and life sentence criteria for consideration under the bill. Of these, 10 have served 25 years and another 2 are within one year of serving 25 years. Of these 12, only 5 meet the criteria of no disciplinary report within 3 years.¹³

The Parole Commission reports that the fiscal impact would be indeterminate because the target population of juvenile offenders is so small.¹⁴ While the Parole Commission anticipates a workload increase from reviewing existing and future cases, it does not foresee that the number of adolescent offenders eligible for parole under the bill would be significant enough to warrant requiring additional staff at this time.¹⁵

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

2. Other:

None.

¹¹ Department of Corrections. 2012 Analysis of HB 5.

¹² *Id.*

¹³ *Id.*

¹⁴ Florida Parole Commission. 2012 Analysis of HB 5.

¹⁵ *Id.*

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES